

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO MOTION OF THE
ARKANSAS FARM BUREAU FEDERATION FOR LEAVE TO FILE AMICUS BRIEF**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), hereby submits this response in opposition to the Motion of Arkansas Farm Bureau Federation for Leave to File Amicus Brief [DKT #1545] ("*Amicus* Motion"). Because the *Amicus* Motion is "not timely, useful or helpful to the Court beyond the help the lawyers for the parties are able to provide," the *Amicus* Motion must be denied.

I. The *Amicus* Motion must be denied because it is not timely, useful or helpful to the Court beyond the help the lawyers for the parties are able to provide.

A. Governing legal principles

The State incorporates by reference the governing legal principles it set out in its Response in Opposition to the Motion of the National Chicken Council, U.S. Poultry & Egg Association, and the National Turkey Federation for Permission to File Brief as *Amici Curiae* in Opposition to the Plaintiff's Motion for Preliminary Injunction. See DKT #1568.

B. The *Amicus* Motion is untimely

The Preliminary Injunction Motion has been on file for approximately three months now. The *Amicus* Motion should be denied as untimely because it has been filed at the eleventh hour -- a mere four days before the scheduled start of the preliminary injunction proceeding. It has offered no explanation for its delay in filing its *Amicus* Motion. To require the State to expend resources responding to an *amicus* brief as it makes its final preparations for the preliminary injunction hearing is an unnecessary distraction, improper, and prejudicial.

C. The *Amicus* Motion is not useful or helpful to the Court beyond the help the lawyers for the parties are able to provide

The proposed *amicus* brief attached to the *Amicus* Motion raises the same flawed arguments that have already been raised in briefing by Defendants or other *amici*, namely: (1) that poultry waste is not a solid waste within the meaning of RCRA, (2) that Arkansas has a regulatory scheme addressing the handling of poultry waste, and (3) that poultry waste does not present an imminent of substantial endangerment to health or the environment.

As this Court recently stated in *JPMorgan Chase Bank, N.A. v. Fletcher*, 2008 WL 73233, *1 (N.D. Okla. Jan. 7, 2008), "[a]micus briefs filed by allies of litigants which duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief, are an abuse and should not be allowed. . . . The term 'amicus curiae' means friend of the court, not friend of a party." *Id.* at *1 (denying motion to file *amicus* brief because it would otherwise "place the proposed amicus in the position of an additional counsel for the defendant rather than a friend of the Court"). This Court went on to deny the *amicus* motion in *JPMorgan Chase* because

it does not appear that the proposed amicus possesses unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide. [Defendant] is represented in this case by exceptional

lawyers. Current counsel are fully capable of presenting the law and the facts to assist the Court in resolving the issues presented.

Id. at *2. So too, here. The Arkansas Farm Bureau Federation's proposed *amicus* brief does not contain "unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide."

In short, for lack of utility, the Arkansas Farm Bureau Federation must, therefore, be denied permission to file its proposed *amicus* brief. See *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1271, 1274 (D.N.M. 2002) (denying leave to file *amicus* brief for lack of utility); *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1177-78 (D. Nev. 1999) (same).

II. Conclusion

For the foregoing reasons, Arkansas Farm Bureau Federation *Amicus* Motion [DKT #1545] should be denied.

Respectfully Submitted,

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